

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JANET R. YOUNG**

Claimant

VS.

**FAST EDDY'S**

Respondent

AND

**AETNA CASUALTY & SURETY COMPANY**

Insurance Carrier

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Docket No. 211,877

**ORDER**

Respondent and its insurance carrier appeal from the October 28, 1997 Award entered by Administrative Law Judge Bryce D. Benedict. The Appeals Board heard oral argument on May 27, 1998.

**APPEARANCES**

Claimant appeared by her attorney, Michael J. Unrein of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Gregory D. Worth of Lenexa, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopts the stipulations listed in the Award by the Administrative Law Judge.

**ISSUES**

The Award entered by the Administrative Law Judge found the claimant had a 62.5 percent work disability as a result of the injuries she suffered in her August 2, 1995 work-related accident. Respondent and its insurance carrier appeal those findings. The issue for determination by the Appeals Board is the nature and extent of claimant's disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the Administrative Law Judge should be modified.

The Award by the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat them here. Except as to the percentage of claimant's work tasks lost, the Appeals Board adopts the findings and conclusions of the Administrative Law Judge.

The Appeals Board agrees that claimant is entitled to a work disability award. The Appeals Board also agrees with the finding that claimant has proven a 100 percent wage loss. As to the percentage of task loss, however, the Appeals Board adopts the opinion expressed by Dr. P. Brent Koprivica that claimant has lost the ability to perform two of the six tasks claimant had performed, or 33 percent. Averaging the 100 percent wage loss with the 33 percent task loss results in a work disability of 66.5 percent.

There is no reduction in the disability award for a preexisting functional impairment under K.S.A. 44-501(c) because no impairment was proven to have preexisted. Claimant's preexisting back condition was not an impairment. The condition was asymptomatic and claimant was under no prior restrictions. Therefore, all of claimant's disability is attributable to the work-related accident.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bryce D. Benedict dated October 28, 1997, should be, and is hereby, modified as follows:

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Janet R. Young, and against the respondent, Fast Eddy's, and its insurance carrier, Aetna Casualty & Surety Company, for an accidental injury which occurred August 2, 1995, for 8 weeks of temporary total disability compensation at the rate of \$185.25 per week or \$1,482, and 13 weeks of temporary total disability compensation at the rate of \$201.35 per week or \$2,617.55, followed by 271.99 weeks at the rate of \$201.35 per week or \$54,765.19, for a 66.5% permanent partial disability, making a total award of \$58,864.74.

As of June 10, 1998, there is due and owing claimant 8 weeks of temporary total disability compensation at the rate of \$185.25 per week or \$1,482, and 13 weeks of temporary total disability compensation at the rate of \$201.35 per week or \$2,617.55, followed by 128 weeks of permanent partial compensation at the rate of \$201.35 per week in the sum of \$25,772.80 for a total of \$29,872.35, which is ordered paid in one lump sum

less any amounts previously paid. The remaining balance of \$28,992.39 is to be paid for 143.99 weeks at the rate of \$201.35 per week, until fully paid or further order of the Director.

The Appeals Board approves and adopts all remaining orders in the Award not inconsistent herewith.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael J. Unrein, Topeka, KS  
Gregory D. Worth, Lenexa, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director